IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11511 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 :: No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

D R BAROT

Appearance:

1. Special Civil Application No. 11511 of 2002

MR HARDIK C RAWAL for Petitioner

MR GM JOSHI for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2003

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the Gujarat State Road Transport Corporation [hereinafter referred to as, "the Corporation"]. The Corporation challenges the judgment and award dated 25th January, 2003 passed by the learned Labour Judge, Himatnagar, District-Sabarkantha in Reference [LCH] No. 126 of 1999. The respondent is the workman employed as a Bus Conductor by the Corporation.

On 4th December, 1991, the workman was assigned duty on Chhitariya - Vijaynagar route. The said bus was checked at Himatnagar. Upon such checking, it was found that the workman had collected bus fare of Rs. 4/= from two passengers but had not issued tickets to them; from another 5 passengers, the workman had collected bus fare of Re.1.25p. [Rs.6=25p.] but had not issued tickets to them. From still one group of three passengers, the workman had collected bus fare of Rs. 3=25p. but had not issued tickets and the workman was found to have allowed one passenger to travel free-of-charge; the workman had not filled in the Way-Bill properly. For the above referred illegalities, a disciplinary action was initiated against the workman by issuing chargesheet on 18th December, 1991. On holding departmental inquiry, the Inquiry Officer opined that the imputation of charge made against the workman was proved. Pursuant to the guilt proved against the workman, by Order dated 27th May, 1998, the workman was dismissed from service. Feeling aggrieved, the workman raised industrial dispute. The same was referred to the Labour Court, Himatnagar and was registered as above.

In the said Reference, the claim made by the workman has partially been allowed. The order of dismissal made against the workman has been quashed and set-aside. The workman has been ordered to be reinstated in service with continuity of service. For the guilt proved against the workman, the lesser punishment of withholding of three increments with future effect has been ordered to be imposed upon the workman. Feeling aggrieved, the Corporation has preferred the present petition.

Mr. Raval has submitted that it is the disciplinary authority who is empowered to select which of the several punishments which can be imposed upon the delinquent workman should be imposed for the misconduct proved against the delinquent workman. No Court of Law including the Labour Court shall interfere with such order of punishment imposed by the disciplinary authority unless the penalty imposed upon the workman is

unconscionable or is shockingly disproportionate to the guilt proved against the delinquent workman. In the present case, the misconduct committed by the workman is a gross act of misappropriation of the funds of the Corporation, cheating the Corporation and perpetrating fraud upon the Corporation. In no circumstances, such an act of workman can be viewed lightly. In view of the gravity of the misconduct proved against the delinquent, the order of dismissal from service cannot be said to be unconscionable or shockingly disproportionate to the guilt proved against the delinquent. In support of his argument, learned advocate Mr. Raval has relied upon the judgment of the Hon'ble Supreme Court in the matter of Regional Manager, U.P SRTC, Etawah & Ors. vs. Hotilal & Another [(2003) 3 SCC 605].

The learned advocate Mr. Joshi has contested the petition. He has submitted that Section 11-A of the Industrial Disputes Act, 1947 empowers the Labour Court to award lesser punishment to the delinquent workman when the order of dismissal or discharge is not found to be justified. In the present case, the learned Judge has categorically said that the order of dismissal of the workman from service is not commensurate to the guilt proved against the workman. Hence, the Labour Judge was within his jurisdiction to set-aside the order of *dismissal and in directing the Corporation to reinstate the workman in service and also in imposing a lesser punishment in lieu of dismissal from service. The learned Judge, therefore, cannot be said to have committed any illegality which should warrant interference by this Court. He, therefore, supports the judgment and seeks dismissal of the present petition.

In Re-Hotilal & Anr. [Supra], the workman, a Bus Conductor employed by the U.P State Road Transport Corporation was dismissed from service on the charge of not issuing tickets to 16 passengers after realizing fare from the said passengers. The said order was confirmed in a writ petition. However, in Appeal the Division Bench of the High Court set-aside the order of termination leaving it open to the employer to award any punishment, other than removal or termination or compulsory retirement. While allowing the Appeal; considering the case-law, the Hon'ble Court observed that, "..It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference

is very limited and restricted to exceptional cases in the indicated circumstances. ..... A mere statement that it is disproportionate would not suffice... ....It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper."

In the present case, as recorded hereinabove, the workman did not issue tickets to as many as 10 passengers, even after realizing the bus fare from them. He allowed one passenger to travel free-of-charge. The aforesaid charge was proved before the disciplinary authority. Even the learned Judge having examined the records of the disciplinary proceeding upheld the finding recorded by the disciplinary authority.

The learned Judge has in paragraph 8 of the judgment merely recorded that the order of punishment imposed by the Corporation is disproportionately high. The workman deserves a lesser punishment. Consequently, the learned Judge has set-aside the order of punishment of dismissal from service and has imposed punishment of withholding of three increments with future effect.

Thus, the only question that arises is whether the learned Judge was justified in invoking the power conferred by Section 11-A of the Act for setting aside the order of dismissal made against the workman and for directing reinstatement of the workman with a lesser punishment.

To me it appears that the learned Judge has been guided by undue sympathy for the workman. The learned Judge having held that the workman has committed a grave misconduct and having recorded that earlier also on as many as 42 occasions, the workman was found guilty and was visited with suitable punishment, has in the next sentence, said that the punishment imposed upon the workman is unduly harsh. By very nature of his duty, a

Bus Conductor of the Transport Corporation is entrusted to collect fare from the passengers. Thus, the bus conductor acts on behalf of the Corporation to realize its revenue, the only source of income of the Corporation. If such funds are misappropriated, the Corporation would lose its revenue. Ultimately, it is the public money which is being misappropriated. The dishonest intention and the lack of integrity on the part of the workman is more than evident. Continuance of such workman in service would not only result into financial loss to the Corporation, it would also encourage the like-minded other workmen. In no circumstances, the Court of Law can be instrumental in encouraging dishonesty.

Considering the gravity of the offence committed by the workman and his past record of several incidence of defaults, the order of dismissal from service can be the only appropriate punishment. The disciplinary authority, therefore, cannot be said to have erred in imposing the punishment of dismissal from service. In the circumstances of the case, the Court below ought not to have invoked the powers conferred by Section 11-A of the Act to set-aside the order of dismissal and to direct reinstatement of the workman in service.

In the result, the petition succeeds. The impugned judgment and order dated 25th January, 2002 passed by the learned Labour Judge, Himatnagar in Reference [LCH] No. 126 of 1999 is quashed and set-aside. The order of punishment imposed by the disciplinary authority is restored. Rule is made absolute with costs. The cost is quantified to be Rs. 5,000/= [Rupees Five Thousand only].

By Order dated 29th November, 2002 [Coram : N.G Nandi, J.] the present petition was admitted to final hearing. The execution of the impugned award was stayed subject to compliance with Section 17-B of the Act. Mr. Joshi has submitted that the workman has filed Affidavit and has stated on oath that he has not been gainfully employed. The said statement made by the petitioner on oath has not been controverted by the Corporation. The Corporation has not employed the workman, the workman is entitled to wages last drawn by him since the date of the award and during the pendency of the petition. In respect of this claim, Mr. Joshi has relied upon the judgments of the Hon'ble Supreme Court in the matters of Regional Authority, Dena Bank & Anr. vs. Ghanshyam [AIR (2001) SC 2270] and of Dena Bank v. Kirtikumar T. Patel [AIR (1998) SC 511].

In the matter of Regional Authority, Dena Bank [Supra], Mr. Joshi has particularly relied upon the observations made in paragraph 12 of the judgment. In the said paragraph, the Hon'ble Judges of the Supreme Court have observed that, "..the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of the objects and reasons of the Industrial disputes (Amendment) Act, 1982, by which Section 17-B was inserted in the Act." In the matter of Dena Bank [Supra], while considering the scope and ambit of Section 17-B of the Act, the Hon'ble Supreme Court has observed that, "..As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set-aside by the High Court or this Court. Since the payment is of such a character Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn"... Since the amount is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set-aside."

Be it noted that in the matter of Regional Authority, Dena Bank [Supra], the challenge was to the order of the High Court directing the appellant Bank to pay regular payscale to the respondent workman with effect from the date of the award, the question which arose for consideration before the Hon'ble Supreme Court was, "whether the order of the High Court directing payment of regular salary payable on reinstatement as on the date of the order to the respondent, which is over and above the full wages last drawn occurring in Section

17-B of the Act, is sustainable." While allowing the said Appeal, the Hon'ble Court also considered the scope and ambit of Section 17-B of the Act. However, the question whether Section 17-B of the Act shall operate from the date of the order or shall operate during the pendency of the proceedings was not a matter directly at issue. While, in the matter of Dena Bank [Supra], the Hon'ble Court has repeatedly stated that the last wages drawn by the workman referred to in Section 17-B is required to be paid during the pendency of the proceedings. Section 17-B of the Act expressly provides that, "where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him." Keeping in view the expression, "during the period of pendency of such proceedings in the High Court or the Supreme Court" occurring in Section 17-B of the Act and the above referred judgments of the Hon'ble Supreme Court, the claim of the workman for wages from the date of the order is not sustainable.

In view of the above discussion, it is directed that the petitioner Corporation shall pay to the workman full wages last drawn by him, inclusive of any maintenance allowance admissible to him from the date of the petition till the date. Such amount shall be paid within four months from today.

Sd/=

{Miss R.M Doshit, J.}

Prakash*